

SENATE BILL NO. 5034

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on \_\_\_\_\_

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Boysko)

A BILL to amend and reenact §§ 53.1-40.01 and 53.1-202.3 of the Code of Virginia, relating to release of prisoners.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 53.1-40.01 and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:**

**§ 53.1-40.01. Conditional release of geriatric prisoners.**

A. As used in this section:

"Permanently physically disabled" means having a chronic or progressive medical condition caused by injury, disease, or illness that renders a person permanently and irreversibly physically disabled and such condition renders the person no longer a threat to society.

"Terminally ill" means having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

B. Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, (i) who has reached the age of sixty-five is 65 years of age or older and who has served at least five years of the sentence imposed or, (ii) who has reached the age of sixty is 60 years of age or older and who has served at least ten 10 years of the sentence imposed may petition, (iii) who is terminally ill, or (iv) who is permanently physically disabled is eligible for consideration by the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this section.

**§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

A. A maximum of four and one-half 4.5 sentence credits may be earned for each 30 days served on a sentence for (i) an act of violence as defined in subsection A of § 19.2-297.1; (ii) a felony offense in

Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2; (iii) unlawful creation of image of a nonconsenting person under the age of 18 in violation of subsection D of § 18.2-386.1; (iv) production, publication, sale, or financing of child pornography in violation of § 18.2-374.1; (v) display of child pornography or grooming video or materials to a child in violation of § 18.2-374.4; or (vi) any of the following felony offenses where the victim was a minor: (a) solicitation of prostitution in violation of § 18.2-346, (b) aiding prostitution or illicit sexual intercourse in violation of § 18.2-348, (c) using vehicles to promote prostitution or unlawful sexual intercourse in violation of § 18.2-349, (d) trafficking or pandering in violation of subdivision (3) or (4) of § 18.2-355, (e) receiving money for procuring a person for prostitution or other unlawful acts in violation of § 18.2-356, (f) pandering in violation of § 18.2-357, (g) commercial sex trafficking in violation of § 18.2-357.1, or (h) performing or causing to be performed certain sexual acts on or by certain family members in violation of subsection B of § 18.2-361. The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

B. For any other offense for which sentence credits may be earned, earned sentence credits shall be awarded and calculated using the following four-level classification system:

1. Level I. For inmates receiving Level I sentence credits, 13 days shall be deducted from the inmate's sentence for every 30 days served. If the inmate maintains a Level I classification beyond one year consecutively, sentence credits shall be awarded as follows: (i) during the second year, 16 days shall be deducted for every 30 days served; (ii) during the third year, 20 days shall be deducted for every 30 days served; (iii) during the fourth year, 25 days shall be deducted for every 30 days served; and (iv) during the fifth year and any consecutive year thereafter, at the rate of one day for each one day served. Level I sentence credits shall be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions.

2. Level II. For inmates receiving Level II sentence credits, 7.5 days shall be deducted from the inmate's sentence for every 30 days served. Level II sentence credits shall be awarded to inmates who

participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require improvement in not more than one area.

3. Level III. For inmates receiving Level III sentence credits, 3.5 days shall be deducted from the inmate's sentence for every 30 days served. Level III sentence credits shall be awarded to inmates who participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 but who require significant improvement in two or more areas.

4. Level IV. No earned sentence credits shall be awarded to any inmate who fails to participate in and cooperate with all programs to which the inmate is assigned pursuant to § 53.1-32.1 or who causes substantial security or operational problems at the correctional facility.

C. An inmate shall be reevaluated and classified pursuant to subsection B each year, or sooner if required by Board regulation, and documentation of such classification, along with a calculation of the inmate's earned sentence credits, shall be included in the inmate's correctional file. An inmate's classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the inmate is confined. If an inmate is downgraded to a classification by which the inmate receives a lower amount of earned sentence credits than the inmate received during the previous year or classification period, a clear explanation of the reasons for such reclassification shall be included in the inmate's correctional file. An inmate may appeal such reclassification determinations, which shall be filed and conducted in accordance with Board regulations. Such regulations shall include a requirement that such appeals be heard before a neutral and independent arbiter.

D. Any inmate who was confined in a local or regional jail prior to conviction or sentencing shall be credited for such time served. During such confinement in a local or regional jail, the inmate shall receive Level I sentence credits unless the inmate was classified at a different level at the time he was released from his most recent period of confinement, in which case the inmate shall receive sentence credits in accordance with such prior classification.

E. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full

participation in and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

F. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

**2. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned sentence credit system. If it is determined that, upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the release date of any such inmate passed prior to the effective date of this act, the inmate shall be released upon approval of an appropriate release plan and within 60 days of such determination; however, no inmate shall have a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is released prior to completion of any reentry programs deemed necessary by the Department of Corrections on the inmate's most recent annual review or prior to completion of any programs mandated by court order, the inmate shall be required to complete such programs under post-release community supervision, provided that release prior to completion of any programs required by the court is not strictly prohibited by the terms of the court order.**

**3. That the provisions of the first enactment amending § 53.1-202.3 of the Code of Virginia and of the second enactment (the sentence credit amendments) shall take effect on July 1, 2022. The Department of Corrections (the Department) shall convene a work group to study the impact of the sentence credit amendments and shall report to the General Assembly on its findings by July 1, 2022. The report shall include (i) the state fiscal impact of the sentence credit amendments, including any cost savings realized by reducing the length of time spent by inmates in state correctional facilities; (ii) the number of inmates affected by the sentence credit amendments and the distribution**

107 of such inmates among state correctional facilities; (iii) a detailed six-year plan describing the  
108 estimated releases by facility under the bill, accounting for any offenders that will be transferred  
109 from jail, as well as offenders who would be otherwise released in the covered years; and (iv) any  
110 other information the Department deems relevant. The work group shall include representatives or  
111 staff from the Virginia State Crime Commission, the Senate Committee on Finance and  
112 Appropriations, the House Committee on Appropriations, the Division of Legislative Services, and  
113 any other stakeholders the Department deems appropriate.

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